



Legislation Details (With Text)

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Title: Recommendation to authorize City Manager to execute all documents necessary for the First Amendment to Design-Build Contract No. 28388 between the City of Long Beach and ARB, Inc., in an estimated amount of \$42,470,106, plus a five percent contingency amount of \$2,123,505, if necessary; and increase the appropriation to \$44,593,611 in the Airport Enterprise Fund (EF 320) in the Airport Department (AP) for the completion of design and construction of Phase I of a parking structure at the Long Beach Airport;

Adopt resolution authorizing City Manager to execute amendments to the Airport Commercial Paper Program allowing the City to take advantage of certain provisions of the American Recovery and Reinvestment Act of 2009; approving a Third Supplemental Subordinate Trust Indenture, a Second Amendment to the Issuing and Paying Agent Agreement, a Second Amendment to Commercial Paper Dealer Agreement, and certain other documents relating to the Subordinate Airport Revenue Commercial Paper Program, approving the distribution of a Commercial Paper Offering Memorandum;

Sponsors:

Indexes: Agreements

Code sections:

Attachments: 1. 110309-R-30sr&att Revised.pdf, 2. 110309-R-30-Bond info.pdf, 3. 110309-R-30-1st Sup Sub Trust Indenture.doc, 4. 110309-R-30-2nd Amend Comrl Paper agrmt.doc, 5. 110309-R-30-2nd Amend Iss & Pay agrmt.doc, 6. 110309-R-30-3rd Sup Sub Trust Indenture.doc, 7. 110309-R-30-4th Sup Sub Trust Indenture.doc, 8. 110309-R-30-Bond Purch Agrmt.doc, 9. 110309-R-30-Escrow agreement.doc, 10. 110309-R-30-Master Sen Trust Indenture.doc, 11. RES-09-0132.pdf

Date	Ver.	Action By	Action	Result
11/3/2009	1	City Council	approve recommendation and adopt	Pass

Recommendation to authorize City Manager to execute all documents necessary for the First Amendment to Design-Build Contract No. 28388 between the City of Long Beach and ARB, Inc., in an estimated amount of \$42,470,106, plus a five percent contingency amount of \$2,123,505, if necessary; and increase the appropriation to \$44,593,611 in the Airport Enterprise Fund (EF 320) in the Airport Department (AP) for the completion of design and construction of Phase I of a parking structure at the Long Beach Airport;

Adopt resolution authorizing City Manager to execute amendments to the Airport Commercial Paper Program allowing the City to take advantage of certain provisions of the American Recovery and Reinvestment Act of 2009; approving a Third Supplemental Subordinate Trust Indenture, a Second Amendment to the Issuing and Paying Agent Agreement, a Second Amendment to Commercial Paper Dealer Agreement, and certain other documents relating to the Subordinate Airport Revenue Commercial Paper Program, approving the distribution of a Commercial Paper Offering Memorandum;

Parking Structure Construction Contracts

On February 18, 2003, the City Council authorized the execution of Design-Build Contract No. 28388 with ARB, Inc., for the design and construction of a parking structure (Structure) in the amount of \$32.2 million. The City Council limited authority for only the initial phase of the Structure, requiring further City Council approval for any additional phases. The initial phase of the Structure consists of design, engineering and preparation of construction documents.

Concurrently, the City Council authorized a contract with BonTerra for the completion of an Environmental Impact Report (EIR) for the Airport Terminal Improvement Project, which includes the Structure. From February 2003 through June 2006, the City conducted the EIR process culminating in City Council certification of the EIR on June 20, 2006. Although a preliminary site plan of the Structure was created for use in the EIR, a concerted effort commenced on the final Structure site plan following City Council certification of the EIR. On January 3, 2008, the Planning Commission approved the site plan for a 3,200-space Structure at the Long Beach Airport (see Exhibit "A") and work continued on engineering and preparation of the construction documents. On May 20, 2008, the City Council authorized the use of Airport Commercial Paper in the amount of \$5 million for completion of the design of the Structure.

In February 2009, due to economic factors affecting the nation's economy and, in particular, the aviation industry, Airport staff began to identify a "phased" approach to construction and financing of the Structure. This approach takes into consideration the Airport's current need for additional parking, economic factors and the necessity for financial sustainability. The Airport intends to construct the Structure in two phases based on current and future parking demand. Phase I of the Structure will provide for 1,989 parking spaces with an additional 239 surface parking spaces on the future site of Phase II (see Exhibit "B"). When built, Phase II of the Structure will provide for the remaining 1,211 parking spaces.

In order to move forward with construction of Phase I, an amendment to Design-Build Contract No. 28388 is required. The First Amendment contains the following major terms and provisions:

- Owner: City of Long Beach.
- Design-Builder: ARB, Inc.
- Contract Price: Owner shall pay Design-Builder the sum of \$42,470,106 for construction of Phase I of the Structure. Phase I of the Structure shall consist of the following Stages:
 - o Stage I: \$ 4,500,443 - Design, Eng. & Construction Document Preparation;
 - o Stage IIA: \$ 3,244,339 - Terminal Access Roadway;
 - o Stage IIB: \$ 4,421,010 - Parking Structure Site Work;
 - o Stage III: \$30,304,314 - Construction of Phase I Structure.
\$42,470,106

Exclusive of the design build contract, a 5 percent contingency amount of \$2,123,505 is being requested to cover unknown underground site conditions. The \$42,470,106 will be financed through a combination of tax-exempt bond proceeds (\$40,200,000) and Airport Enterprise Funds (EF 320).

- **Substantial Completion:** Substantial Completion of the project shall be achieved no later than 481 calendar days after the Design-Builder's receipt from the Owner of a formal Notice to Proceed (NTP) for construction of the building pad and Stage III of the project. The NTP shall not be issued prior to issuance of the building permit.

In addition, various provisions and attachments shall be edited and updated to reflect the revised scope of the project as well as updates to personnel, regulations and requirements since the initial execution of the contract. The amended contract shall only constitute work for Phase I of the Structure. Future City Council approval will be necessary for the design and construction of Phase II.

Stage IIA of the construction project will extend the southern portion of Donald Douglas Drive to Lakewood Boulevard. This will provide a new exit for terminal traffic to turn south on Lakewood Boulevard and improve the traffic circulation around the terminal and parking facilities. Studies and analyses conducted during the EIR process recommended the construction of the Terminal Access Roadway to improve vehicle circulation at the Airport.

Amendments to Passenger Facility Charge (PFC) Program

To fund the Terminal Access Roadway construction project, the Airport plans to amend the current PFC program to extend the collection period and submit a new application. Under Federal law, PFCs can only be used for certain non-revenue producing airport capital projects. The Airport has begun the process to amend the PFC program and anticipates its full completion within the next six months. The process will require future City Council approval. In the interim, existing Airport Enterprise Funds will be utilized for the costs associated with the Terminal Access Roadway project in an effort to maintain a targeted construction commencement date of December 1, 2009. The Airport Enterprise Fund will be reimbursed for the Terminal Access Roadway construction project from the amended PFC program, if approved. If not approved, the costs will be absorbed by the Airport Fund.

Amendments to Commercial Paper Program

As authorized in 2004 and amended in 2008 by the City Council, the Airport Commercial Paper Program was implemented to issue an aggregate, not to exceed \$25 million to finance ongoing capital maintenance and rehabilitation to the Airport (\$15 million) and design costs related to the parking structure and terminal improvements (\$10 million). In 2009, the American Recovery and Reinvestment Act of 2009 (ARRA) was enacted. In order to take advantage of certain tax provisions of ARRA, it is necessary to amend certain provisions of the Commercial Paper Program issuing documents.

ARRA has temporarily repealed the Alternative Minimum Tax (AMT) on new money private activity bonds, and allows the refunding of specific AMT bonds into non-AMT status. This will allow the Airport to fund private activities with its Commercial Paper Program through 2010. The resolution would approve the third supplemental subordinate trust indenture which amends the previous definition and title of the Series A Notes and Series B Notes to conform with ARRA's treatment for federal income tax purposes; a second amendment to the issuing and paying agent agreement which amends references to Series A Notes and Series B Notes to conform to the amended supplemental trust indenture; and a second amendment to the commercial paper dealer agreement which amends references to Series A Notes and Series B Notes to conform to the amended supplemental trust indenture.

Authorization to Issue Airport Revenue Bonds

The Resolution would authorize the execution of bond documents for the issuance and sale of senior airport revenue bonds in an amount not to exceed \$65,000,000, and amends the Airport Commercial Paper program documents to conform with the new master trust indenture and take advantage of the repeal of Alternative Minimum Tax for certain uses under the ARRA.

The bond proceeds shall be used to finance Phase I of the parking structure project, reimburse the City for expenditures previously incurred related to the parking structure project, fund capitalized interest during the construction period, refund a portion (\$4 million) of the \$10 million Airport Commercial Paper program used to finance the design of the parking structure, refund in full the 1993 Airport Certificates of Participation that refunded the 1991 Certificates of Participation, pay the cost of issuance, and if advantageous, purchase bond insurance. The refunding of the 1993 Airport Certificates of Participation is anticipated to generate approximately \$140,000 in present value savings for the Airport without a term extension or debt service increase. The chart below illustrates the amounts related to each of the debt issuance components:

<u>Description</u>	<u>Projected Amount</u>
Parking Structure Project	\$40,200,000
Commercial Paper Refunding	4,000,000
1993 Certificates of Participation Refunding	7,480,000
Debt Service Reserve	4,868,576
Capitalized Interest	4,349,930
Cost of Issuance	451,906
Underwriter's Discount	496,399
Total	<u>\$61,846,811</u>

This letter was reviewed by Assistant City Attorney Heather A. Mahood on September 15, 2009 and Budget and Performance Management Bureau Manager David Wodynski on October 12, 2009.

City Council action is requested on November 3, 2009, to finalize the terms of the Second Amendment and proceed to secure funding for the construction of Phase I of the parking structure. The anticipated date of sale of the Bonds is mid-November 2009. The anticipated date for commencement of construction for the parking structure is December 1, 2009.

The amended contract with ARB, Inc., is for an estimated amount of \$42,470,106. A five percent contingency of \$2,123,505 is recommended for unforeseen circumstances. An increase in appropriation of \$38,093,611 is requested to bring the total appropriations for this project to \$44,593,611 in the Airport Enterprise Fund (EF 320) in the Airport Department (AP).

The increase in appropriation will be funded by the proceeds from the sale of Bonds, existing Airport Enterprise Funds, and the amended PFC Program, if approved. These actions have no impact on the General Fund. In addition, the Airport Enterprise Fund (EF 320) in the Airport Department (AP) will need appropriation in the amount of \$950,000 to pay its first net debt service payment in FY10 and is included in the Recommendation.

All future debt service payments of approximately \$4.6 million annually will be included in future Airport Department budgets. Please note the bonds are secured by a senior lien on the net revenues of the Airport; hence, revenues net of operating costs, will be used to pay for annual debt service obligations. During the construction period, parking revenues are projected to be approximately \$6.3 million annually, rising to approximately \$10.5 million annually upon completion of construction. The increased parking revenue will be available to support debt service. Please also note that the current Use Agreement for Lot D between the City of Long Beach and the Boeing Company, divides approximately \$600,000 in annual Lot D parking revenues between those two parties equally. When completed, the parking structure replaces Lot D use, retires the Use Agreement and redirects parking utilization and the corresponding revenue to the new garage at the Airport. The project also eliminates the monthly lease expense of \$1.8 million annually for the use of Lot D and the \$1

million in annual shuttle costs, thus also making those funds available for debt support.

Traditionally, General Aviation Revenue Bonds (GARBs) have been used to fund Airportrelated construction projects. Similar to other municipally issued revenue bonds, GARBs are tax-exempt financing for governmental (non-private) purposes. The use of GARB proceeds is restricted to airport property for aviation related purposes. In addition to GARBs, the City is examining alternative debt structures available through ARRA and has determined that the parking structure is eligible for the Build America Bonds (BABs) program. Under the BAB structure the Airport would issue taxable financing bonds; however, the U.S. Treasury Department will subsidize 35 percent of the interest expense of the issuer through the life of the debt. ARRA has made BABs available during calendar years 2009 and 2010 only. To date, over \$32 billion in BABs have been issued. Given the current interest rate environment, a hybrid financing structure offers an annual estimated debt service savings of approximately \$150,000 that combine both GARBs and BABs. The final decision as to what combination of GARBs and BABs will be used will be made based on prevailing market conditions, interest rates and advice from the City's external Financial Advisor as well as Bond Counsel.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AUTHORIZING AND APPROVING A THIRD SUPPLEMENTAL SUBORDINATE TRUST INDENTURE, A SECOND AMENDMENT TO ISSUING AND PAYING AGENT AGREEMENT, A SECOND AMENDMENT TO COMMERCIAL PAPER DEALER AGREEMENT, AND CERTAIN OTHER DOCUMENTS RELATING TO THE CITY OF LONG BEACH, CALIFORNIA SUBORDINATE AIRPORT REVENUE COMMERCIAL PAPER PROGRAM, APPROVING THE DISTRIBUTION OF A COMMERCIAL PAPER OFFERING MEMORANDUM AND AUTHORIZING AND DIRECTING EXECUTION THEREOF AND CERTAIN ACTIONS RELATED THERETO

LORI ANN FARRELL
DIRECTOR OF FINANCIAL MANAGEMENT/CFO

MARIO RODRIGUEZ
DIRECTOR OF LONG/8EACH AIRPORT

NAME
TITLE

APPROVED:

PATRICK H. WEST
CITY MANAGER